



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RPP, FF

Introduction

This hearing was convened by way of conference call in repose to the tenants application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to return the tenants personal property; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord was done in accordance with section 89 of the *Act*, sent via registered mail on April 20, 2012. Mail receipt numbers were provided by the tenant in evidence. The tenant states this mail was returned to him as the landlord failed to collect it so the tenant then served the landlord in person on May 03, 2012. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to return the tenants personal property?

Background and Evidence

The tenant testifies that this month to month tenancy started on August 20, 2011 and ended on April 02, 2012. Rent for this unit was \$1,100.00 per month including Hydro. Rent was due on the first day of each month in advance.

The tenant testifies that from the outset of the tenancy the tenant did not have any heating. The tenant testifies that the landlord kept promising to put in the heating each month but this did not occur. The tenant testifies that the gas pipe to the unit had been disconnected. The tenant states the landlord did provide very small heaters but these were not sufficient to heat the unit through the winter.

The tenant testifies that when they moved into the unit they could smell smoke and when they asked the landlord about this smell he told the tenant not to worry about it. The tenant states that through the winter months his son kept coming down with chest infections due to the cold in the unit. The tenant testifies that he took his son to the doctors who confirmed that the tenant's son frequent chest infections were probably caused from a lack of heat. The tenant has provided a copy of a note from the doctor to this effect.

The tenant testifies that they could not stay in the unit when it became really cold and they had to go and stay at a friend's house for a week at a time and on one occasion for two months. The tenant testifies that he reported the landlord to the Residential Tenancy Branch and the landlord became angry and evicted the tenant from the unit without proper notice. The tenant testifies that he did not understand his rights at that

time so he did move out. The tenant testifies that he was unable to collect all his belongings from the property as the landlord told the tenant that if the tenant came back to the unit the landlord would call the police.

The tenant testifies he called the local fire service concerning the smell of smoke in the unit and was told by a member of the fire service that the building had been previously condemned due to a fire and had been boarded up. The tenant testifies that the landlord did not inform the tenant of this at the start of the tenancy.

The tenant testifies that he had paid rent for April, 2012 and the landlord evicted the tenant on April 02, 2012. The tenant seeks to recover the rent paid for April of \$1,100.00. The tenant also seeks compensation of \$500.00 due to the lack of heat throughout the tenancy and the ill effects this had on the tenant's son's health.

The tenant seeks an Order for the landlord to return the tenants personal belongs which include but are not limited to a tile machine; a concrete mixer; a plastic container; some furniture; and clothes.

Analysis

The landlord did not appear at the hearing to dispute the tenants claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants documentary evidence and affirmed testimony before me.

With regard to the tenants claim to recover the rent paid for April, 2012. A landlord is required to serve a tenant with a legal notice to end a tenancy under s. 46; s. 47; s. 48; s. 49; or s. 49(1) of the *Act*. The tenant has testified that the landlord did not serve a Notice of any kind to the tenant as required under the *Act*. Consequently, I find the landlord illegally evicted the tenant from the rental unit on April 02, 2012 and the tenant

is entitled to recover the rent paid from April 02, 2012 to April 30, 2012 to the sum of **\$1,026.66** (\$1,100.00 divided by 30 days =\$36.66 a day, times 28 days).

With regard to the tenants claim for compensation for a lack of heating since the start of the tenancy; I have considered the undisputed testimony of the tenant and find the tenant was without sufficient heat from August, 2011 to April, 2012. I further find from the note presented in evidence from the tenant's doctor that in the doctor's opinion the tenant's son became ill with frequent chest infections due to a lack of heat in the rental unit. Consequently, it is my decision that the tenant is entitled to compensation for the lack of sufficient heat and I find the tenants request for the sum of **\$500.00** to be a fair amount to be paid in compensation from the landlord.

With regard to the tenants application seeking an Order for the landlord to return the tenants personal belongings; I am satisfied from the tenant's undisputed testimony that the landlord has prevented the tenant returning to the rental unit to collect their belongings. **I HEREBY ORDER** the landlord to return the tenants belongings by May 18, 2012. The tenant will contact the landlord to agree a time and date when the tenant can collect his belongings.

If the landlord fails to allow the tenant access to the tenants belongings or has removed and disposed of the tenant's belongings the tenant is at liberty to seek monetary compensation by filing a new application with the Residential Tenancy Board.

As the tenant has been largely successful with this claim I find the tenant is also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenant pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Recover rent for 28 days in April, 2012	\$1,026.66
Compensation for lack of heat	\$500.00
Filing fee	\$50.00

Total amount due to the tenant	\$1,576.66
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Conclusion

I HEREBY FIND largely in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,576.66**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 09, 2012.

Residential Tenancy Branch